IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Appeal from Order No.616 of 2007.

Smt.Smita Brijpalsingh Rajput ..Appellant

versus

The Municipal Corporation of
Gr. Mumbai ..Respondent.

Mr. J.J.Shah for the Appellant

Ms. Geeta Joglekar for Respondent

Coram : S.R.Sathe, J.
Dated : 21st August, 2007

P.C.

1. Heard both the learned advocates at length.

2. The appeal is heard finally at admission stage.

3. Appellant-Original Plaintiff, whose Notice of Motion was dismissed has filed the present Appeal from Order.

4. The suit premises bearing Shop No.735/736 admeasuring 73.2 sq.mts situated at Adarsh Nagar, Link Road Oshiwara, Jogeshwari, Mumbai is occupied by the Plaintiff. He is doing hotel business in the said premises by obtaining necessary license from B.M.C. The land below the said shop is owned by

MHADA. MHADA has also granted permission to him for using the premises for commercial purpose since the year 1997. The defendant Municipal Corporation of Gr.Bombay decided to acquire some portion of the suit property for road widening. The said acquisition became necessary as a result of heavy traffic at the said road. The Corporation, therefore, took necessary steps and also issued notice under Section 297 of B.M.C. Act. The plaintiff gave reply to the said notice on 27.10.2005. After considering the said reply and the documents produced by plaintiff, the defendant Corporation issued notice under Section 299 of B.M.C. Act on 16.1.2006. Thereafter plaintiff did nothing for a long time. According to plaintiff, on 30.9.2006 some persons from Corporation came to him and told him that they would be demolishing the suit premises as per the notice. Hence, plaintiff filed suit for declaration that the notice issued by the Corporation under Section 299 of BMC Act is illegal and bad in law and for permanent injunction restraining the defendant Corporation from acting on the said notice.

5. The Plaintiff also filed Notice of Motion

and prayed for temporary injunction restraining defendant Corporation from acting upon the said notice dated 16.1.2006.

6. The defendant Corporation filed its say and contended that the acquisition of the land below the suit premises is necessary and as such the Corporation has taken necessary steps according to law. The Corporation also contended that as the land below the suit shop is owned by MHADA, plaintiff should have impleaded MHADA in the present suit and the suit is bad for non joinder of necessary party. The Corporation also contended that they have followed due process of law and plaintiff has not made out any prima facie case for granting temporary injunction. The defendant Corporation further contended that the suit is barred by law of limitation as per the provisions of Section 527(b) of B.M.C. Act.

7. After hearing the arguments advanced by both the learned advocates and the documents produced by them, the learned trial Judge came to the conclusion that plaintiff has not made out any prima facie case and the balance of convenience is also not in favour

of plaintiff. Naturally, he dismissed the Notice of Motion.

8. The above mentioned order is challenged in the present appeal. The learned Advocate for the Appellant has urged two points. Firstly, he submitted that the Corporation had not given sufficient opportunity to plaintiff to put forward his case. Secondly, he canvassed before me that the suit notice is bad in law. He, therefore, submitted that temporary injunction as prayed be granted, otherwise the entire suit will become infructuous if the premises are demolished by the Corporation. He therefore submitted that the balance of convenience is in favour of the plaintiff. As against this, Smt. Joglekar learned Advocate for the Defendant Corporation submitted that acquisition of the land under the suit premises is necessary for road widening. The Corporation is acting in pursuance of the powers given under the Act. They have issued necessary notice under Section 297 and opportunity was also given to plaintiff to put forward his case. She also submitted that the suit notice is legal and valid. The present suit is not filed within six months from the notice under Section 299 of

B.M.C.Act and the same is barred by Section 527(b) of the B.M.C.Act. She also submitted that the balance of convenience is not in favour of the plaintiff. On the contrary, if the structure is allowed to remain as it is, the Corporation would not be in a position to implement the road widening scheme and that would ultimately cause great inconvenience and harassment to the public at large. She therefore submitted that the appeal be dismissed.

9. It is not in dispute that the plaintiff has occupied the suit premises and is doing his business at the said place. It is also not in dispute that the land below the suit shop is owned by MHADA. So, the plaintiff ought to have joined MHADA as party to the present suit, but the plaintiff has failed to do so. It is crystal clear from the material on record that initially the Corporation had taken steps as per Section 297 of BMC Act and accordingly line on each side of the public street was determined. It is also an admitted fact that initially the plaintiff had given reply to the notice under Section 297 and defendant Corporation after considering the reply has issued notice dated

16.1.2006 under Section 299 of B.M.C. Act. As per the said provision the Corporation has got every right to take possession of the premises which is required to be acquired for road widening and in respect of which notice has been issued and no sufficient cause is shown for non acquiring the said premises. So, it is very clear that the notice issued by Corporation under Section 299 of B.M.C. Act is legal and valid.

10. Merely because the plaintiff has paid huge amount to MHADA and is doing business at the said place for last several years, it cannot be said that the action taken by the defendant Corporation is not legal. On the contrary, it must be mentioned that if the premises in question are not acquired and taken possession by the Corporation, then the Corporation would not be in a position to extend the width of the road and that would certainly cause great inconvenience and hardship to the public at large. It is needless to say that as a result of increasing population in the city of Bombay it has become necessary for the Corporation to acquire the land and extend the width of the road in order to have smooth traffic on the road. If the premises

are not acquired then certainly inconvenience and irreparable loss would be caused to the public at large. So the, learned trial Judge has rightly held that the plaintiff has failed to make out any prima face case and the balance of convenience is also not in favour of plaintiff.

11. It is needless to say that as per Section 527 (b) of B.M.C.Act it was necessary for the plaintiff to file suit to challenge the validity of notice under Section 299 within six months from the date when the said notice was issued or at any rate within six months after the lapse of seven days from the notice. But the plaintiff kept mum for a long time and filed the suit after a period of about one and half year from the notice under Section 299 of B.M.C.Act. So, the suit is bad and barred by limitation as contemplated under Section 527(b) of the B.M.C.Act. So, looking to the case from any angle it is very clear that plaintiff is not entitled to get temporary injunction as prayed. There is absolutely nothing on record to show that the discretionary order passed by the learned trial Judge is illegal.

12. In this view of the matter there is no substance in this appeal. Hence, appeal is dismissed.

(S.R.Sathe, J.)